

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**

**CIVIL APPEAL No. 46 OF 2017**

(Originating from Decision of Civil Case No. 33 of 2012 in the District Court of  
Temeke delivered on 29th December, 2016)

**PAULO JOHN.....APPELLANT**

Versus

**JAPHERY MISONG'OMBE.....RESPONDENT**

**JUDGMENT**

23rd January - 27th February, 2020.

**J. A. DE-MELLO J;**

At the **Trial Court at Temeke**, the Respondent sued the Appellant claiming among others, **Specific Damages** to the tune of **TShs. 6,000,000/=**, **General Damages TShs. 47,000,000/=**, and, **Exemplary damages** to the tune of **TShs.47,000,000**, as a result of **Defamatory Statement** made to the **Respondent**.

Based on the four (4) framed issues the Court based its findings as follows;

- i. **Whether there was a Contract for disposition of land between the Plaintiff and one Modest Peter Tenga?**
- ii. **Whether the Defendant made the Defamatory Statement against the Plaintiff?**
- iii. **If the answer is yes then whether the said Defamatory Statement made Modest Peter Tenga to rescind the contract of sale?**
- iv. **Which Reliefs are the Parties entitled?**

Answering all the four issues in affirmative, the Court entered judgment in favour of the Plaintiff then, now the Respondent, **Japhery Misong'ombe**, awarding him **Special, General, and Exemplary damages** to the tune of **TShs. 100,000,000/=**, respectively.

Dissatisfied, the Appellant has knocked the door of this Court with four (4) grounds of Appeal, as hereunder;

- 1. That, the Trial Court had misdirected herself in fact and law by deciding on Defamatory Statement in favor of the Defendant without any proof.**
- 2. The Trial Court erred in law and, fact by failure to take into consideration the Appellant being the Village Chairman was duty bound to refuse to approve the sale of the piece of land claimed to be owned by the Respondent when he had knowledge that the same piece of land was claimed by another.**
- 3. That, the Trial Court had misdirected herself in fact and law being prejudiced against the Appellant by writing a judgment which in many aspects differs with records in the proceedings of the case.**
- 4. The Trial Court erred in law and fact by entertaining exaggerated claims for damages without any rational, social or financial justification.**

With the Written submissions prayed and duly, granted, the **Respondent** being represented by **Jailos Mpoki Josephat, Advocate**, with the **Appellant**, fending for himself of course with legal aid presumably.

Submitting on the first ground of Appeal, the Appellant confirmed official records showing that, the Plot belonged to one **Denis Matoro**. The conversation took place in **Advocate Chuwa's office** but, not public and, no evidence was tendered that the Appellant had uttered a defamatory words anywhere outside of the Advocate's office. The Appellant evidence tendered as evidenced at **pages 27-29** of the proceedings, the Appellant had even refused **Advocate Chuwa's** request to take part in expelling one **Petro Andrew** from that piece of land. Further that, the Appellant cannot be in a position to pay **TShs. 100,000,000/=** to the Respondent, considering him being a simple villager residing at **Mbutu Kichangani**. Furthermore that, the Respondent had failed to realize **TShs. 6,000,000/=** in the intended sale of land to one **Modest Petro**, amidst the, controversial sale, that piece of Land remains intact. The Respondent, if persistent, may take over the dispute against the other claimant to the Land Tribunals, in view of establishing who the lawful owner of that piece of Land, which is still intact is. However and, considering the intrinsic value of

the piece of land, no specified damages, can be claimed from the Appellant as no loss has been occasioned at all. It is therefore the Appellant's prayer that this Court allows his Appeal, quash the Judgment, **Decree and Orders of Temeke District Court.**

In reply to written submissions, **Jailos Mpoki Josephat, Advocate** states that, the land sought to be sold by the Respondent, was a surveyed land. This being the case, the Appellant had no authority or power whatsoever, to tell people that the Respondent is not the owner. The one, other than the Court, who was supposed to state that the, piece of land belongs to is the **Registrar of Titles or Municipal Authority.** Therefore the first element of the Tort of Defamation was proved, which the Trial Magistrate correctly found the Appellant guilty. Citing the case of **Pullman vs. Walter Hill & Company [1891] 1 QB 524** at page **527 Lord Esher M.R** held as follows:

**"Publication is the making known, the defamatory matter after it has been written to some person other than the person of whom it is written to some person other than the person of whom it is written. If the statement is sent straight to the person of whom it is written, there**

**is no publication of it; for you cannot publish a libel of a man to himself”.**

The Appellant had published the defamatory statement to other persons other than the Respondent, admitting to have made the said statements and by word of mouth, to one **Modesta Tenga, Ngaliba Mgeni, Mwishehe Abdallah and Abdallah Hassan**, which is referred to as Slander. It is the Respondent's prayer that, the decision of the Trial Court be upheld, thereby be dismissed with costs.

Since this Court is dealing with this Appeal as the first Appellate Court and, as held by the Court of Appeal of Tanzania in the case of **Sugar Board of Tanzania vs. Ayubu Nyimbi & 2 Others, Civil Appeal No. 53 of 2013, CAT at Dar Es Salaam** (Unreported), it has the duty to review the record of evidence of the Trial Court in order to determine whether the conclusion reached upon and, based on the evidence received, justifies a re-evaluation in relation to the referred framed issues, to see whether properly determined. On another limb, libel is a defamatory imputation made in permanent form, such as in writing as opposed to slander whose defamatory imputation is made in a fugitive form such as by speaking or gestures; In an action for Slander, there is need for proof of

actual damage suffered whereas; libel is actionable per se, i.e. without need for proof of actual damage suffered. Although Slander is ordinarily not actionable per-se, it becomes actionable per-se, i.e. without need for proof of actual damage when it imputes the commission of a criminal offence. Damages for defamation is to provide compensation to injury caused to one's reputation, to vindicate one's good name and for the wrong suffered, in order to compensate for the distress, hurt and humiliation. Factors which maybe considered in awarding damages for defamation is measured by the gravity of the defamation suffered, the degree or extent of injury to personal integrity, to professional reputation, to one's honours, the degree or extent of publication of the defamatory matter, the conduct of the defendant, like refusal to tender an apology. A list of authorities referred include; **Prof. Ibrahim Lipumba vs. Zuberi Juma Mzee [2004] TLR 381, Misanya and Another vs. Lista Ndurumia [1983] TLR 245, Reynolds vs. Times Newspapers [2000] 2 LRC 750, John vs. MGN Ltd [1996] 2 All ER 35, Associated Newspapers Ltd vs. Dingle [1962] 2 All ER 737, and, Admiralty Commissioners vs. S.S. Susquehanna [1926] AC 655.**

Based on the fact that, the number of people allegedly who attend the said public rally where the defamatory words were allegedly uttered and, the circulation of the news which published them, are unknown to the Court and, as according to the Respondent's own witness, the injury caused to him was minimal to award him **TShs. 100,000,000/=** as damages, which I find this to be excessive.

All in fine, the Appeal is partly allowed and, partly dismissed, as I exercise my discretion judiciously to reduce the award to , **TShs. 20,000,000/=**.

It is so ordered.

  
**J. A. DE-MELLO**

**JUDGE**

**10/03/2020.**